

No. 11027

**In the United States Circuit Court of Appeals
for the Ninth Circuit**

F. URI & Co., A COPARTNERSHIP; GEORGE URI AND MRS.
HOUSTON, COPARTNERS, DOING BUSINESS UNDER THE
NAME OF F. URI & Co., APPELLANTS

v.

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE
ADMINISTRATION, APPELLEE

BRIEF FOR APPELLEE

GEORGE MONCHARSH,
Deputy Administrator for Enforcement.

FLEMING JAMES, Jr.,
Director, Litigation Division,

DAVID LONDON,
Chief, Appellate Branch,

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INDEX

	Page
Jurisdiction.....	1
Statutes and Regulations Involved.....	2
Statement of Facts.....	4
Argument.....	5
I. The Court below correctly construed the Regulations.....	5
II. Section 2 (h) does not require that a different construction be placed upon the Regulation.....	15
III. The Administrator has not specifically or by implication provided for sales by hotel supply houses to buyers other than purveyors of meals.....	18
IV. The other reasons urged by appellants for a reversal are without merit.....	19
Conclusion.....	20

CITATIONS

Cases:

<i>Bowles v. Seminole Rock & Sand Co.</i> , 145 F. 2d 482, 65 S. Ct. 1215.....	14, 16
<i>Great Northern Ry. Co., v. United States</i> , 315 U. S. 262, 277.....	11
<i>Rosensweig v. United States</i> , 144 F. 2d 30 (C. C. A. 9th, 1944).....	16
<i>Tiger v. Western Investment Co.</i> , 221 U. S. 286, 309.....	11

Statutes:

Emergency Price Control Act of 1942 (56 Stat. 23, 50 U. S. Code App. Section 925 (e)).....	1
Section 205 (c).....	1
Stabilization Extension Act of 1944 (58 Stat. 840).....	1
Section 128 of Judicial Code (28 U. S. Code 225).....	1

Miscellaneous:

Revised Maximum Price Regulation 169 (7 F. R. 10381) Amend- ment 12 (8 F. R. 7109).....	2
Revised Maximum Price Regulation 239 (7 F. R. 10688) Amend- ment 7 (8 F. R. 10444).....	2

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BRIEF FOR APPELLEE

JURISDICTION

This appeal is taken from a judgment entered on January 8, 1945 (R. 25) by the United States District Court for the Northern District of California in favor of the Price Administrator under Section 205 (e) of the Emergency Price Control Act of 1942—56 Stat. 23, 50 U. S. Code App. Section 925 (e)—hereinafter referred to as the Act, as amended by Section 108 (b) of the Stabilization Extension Act of 1944 (58 Stat. 840). Notice of appeal was filed January 18, 1945 (R. 26). Jurisdiction of the district court was invoked under Section 205 (c) of the Act. Jurisdiction to hear and determine the appeal is conferred on this court by Section 128 of the Judicial Code (28 U. S. Code 225).

STATUTES AND REGULATIONS INVOLVED

The action involves two regulations issued under Section 2 (a) of the Act, namely, Revised Maximum Price Regulation 169 (7 F. R. 10381), as amended by Amendment 12, (8 F. R. 7109), which became effective on June 1, 1943, and Revised Maximum Price Regulation 239 (7 F. R. 10688), as amended by Amendment 7 (8 F. R. 10444), which became effective on July 29, 1943. The former regulation establishes maximum prices for beef and veal, and the latter, maximum prices for lamb and mutton. The pertinent provisions of each of the regulations, as well as the pertinent provisions of the Act, are set forth in the appendix to this brief.

Each of the regulations, as modified by the two amendments mentioned above, prescribes two schedules of maximum prices for "fabricated meat cuts" sold to hotels, restaurants, and other purveyors of meals.¹ The first schedule sets forth the maximum prices which may be charged by "hotel supply houses" and the second the prices which may be charged by other sellers, such as slaughterers and wholesalers. The prices which may be charged by hotel supply

¹ The term "fabricated cuts" is defined in each regulation as meaning various specifically described cuts of meats, all of which have always been sold chiefly to purveyors of meals. They differ from "wholesale cuts" which are sold by slaughterers, wholesalers, and other sellers to butchers, and also from the cuts usually sold by retail butchers to ultimate consumers. The meaning of the term "fabricated cuts" is not material to any of the issues of this case.

houses are higher than the prices which may be charged by others than hotel supply houses.²

Each regulation (Revised Maximum Price Regulation 169, as amended by Amendment 12, and Revised Maximum Price Regulation 239, as amended by Amendment 7) defines the term "hotel supply house" as follows:

"Hotel supply house" means a separate selling establishment which is not physically attached to a packing or slaughtering plant, packer's branch house, wholesaler's or other selling establishment; which is engaged in the fabrication of meat cuts and in the sale of fabricated meat cuts, variety meats and edible byproducts to purveyors of meals; and which during the period September 15 through December 15, 1942, sold to purveyors of meals, other than war procurement agencies, 70 percent of the total weight volume of meat, variety meats or edible byproducts sold by it.

The sole issue involved on this appeal is whether or not appellants are a hotel supply house within the meaning of the foregoing definition.

² The reasons for allowing hotel supply houses a premium price are explained at length in the Statement of Considerations, which the Administrator, in compliance with the requirements of Section 2 (a) of the Act, filed with the Division of the Federal Register upon issuing Amendment 12 to Revised Maximum Price Regulation 169. The pertinent parts of the Statement of Considerations above mentioned are printed as Appendix E to Appellants' brief (pp. vii to xii). The price differential established by the regulations was necessary in order to preserve the historical price relationship which had always prevailed in the industry prior to price control.

STATEMENT OF FACTS

Appellants are, and for many years have been, engaged in the business of fabricating and selling meat. They operate but one selling establishment. From September 15, 1942, through December 15, 1942, they sold more than 70% of the total weight volume of all meat, variety meats and edible byproducts sold by them to purveyors of meals. After the dates on which Amendment 12 to Revised Maximum Price Regulation 169 and Amendment 7 to Maximum Price Regulation 239 became effective,³ namely August 3, 1943, and February 1, 1944, they sold some meat to butchers or other persons who were not purveyors of meals, but the weight volume of all meats, variety meats, and edible byproducts which appellants sold to purveyors of meals has at all times been in excess of 70% the total weight volume of all meat, variety meats and edible byproducts sold by them. Appellants charged for fabricated cuts of beef, veal, lamb, and mutton which they sold to purveyors of meals prices equaling but not exceeding those which they would have been entitled to charge if they had been a hotel supply as defined by the regulations.

The trial court held that having sold meats to persons other than purveyors of meals after the effective dates of the amendments above mentioned, appellants were not a hotel supply house as defined by the respective regulations and had therefore violated the

³ Amendment 12 to Revised Maximum Price Regulation 169 was issued on May 26, 1943, and became effective on June 1, 1943. Amendment 7 to Maximum Price Regulation 239 was issued on July 24, 1943, and became effective on July 29, 1943.

regulations by charging purveyors of meals for fabricated cuts of beef, veal and lamb prices in excess of those prescribed by the respective regulations for sales of such products by persons other than hotel supply houses. The court denied, without prejudice to its renewal, the Administrator's application for an injunction on the ground that there was no reasonable ground to fear that appellants would violate the regulations in the future. It found that appellants' violations of the regulations were neither wilful nor the result of a failure to take practicable precautions against their occurrence. Accordingly it granted judgment in favor of the Administrator for an amount equal to, but not in excess of, the amount by which the prices charged by appellants exceeded the maximum prices prescribed by the regulations for sales by sellers other than hotel supply houses.

ARGUMENT

I. The court below correctly construed the regulations

In construing the definition of the term "hotel supply house" as including only those sellers who sell to purveyors of meals exclusively, the court below was clearly right. The construction which it adopted is compelled not only by the clear and unambiguous language of the regulation, but also by the reasons which underlay its adoption as well as by the construction which has been consistently placed upon it not only by the Administrator but also by the industry.

The definition set forth in the regulations lays down three conditions which must be met before any selling establishment can qualify as a hotel supply house.

First, *it must be a separate selling establishment not physically attached to a packing or slaughtering plant, packer's branch house, wholesaler's or other selling establishment.* Secondly, it must be engaged in the fabrication of meat cuts and in the sale of fabricated meat cuts to purveyors of meals. And thirdly, it must have sold to purveyors of meals during the period from September 15, 1942, through December 15, 1942, 70% of the total weight volume of meat, variety meats and edible byproducts sold by it. Significantly, the first two conditions are phrased in the present tense, whereas the third is phrased in the past tense. The first two conditions are therefore continuing conditions. If a selling establishment ceases at any time to meet either of the first two conditions, it ceases to be a hotel supply house.

When appellants sold meat to persons other than purveyors of meals they ceased to meet the first condition of the definition. Their establishment was no longer a separate establishment not physically connected with a wholesaler's or other selling establishment. This may be easily demonstrated. Assume that appellants operated two separate but physically connected establishments, from one of which they sold exclusively to purveyors of meals and from the other of which they sold exclusively to retailers. In such a case, it is obvious that the first condition of the definition would not be satisfied. It is even plainer that it would not be satisfied if sales to purveyors of meals and to retailers are made from the same place. The establishments in that case would be "physically attached" in that they would be physically identical.

In other words, if the first condition of the definition would not be satisfied when separate but physically connected establishments exist, a fortiori, it is not satisfied when the two operations are physically merged.

Any other construction would defeat the purpose and would run counter to the reasons which led to the adoption of the amendments defining the term hotel supply house. Those reasons were explained by the Administrator in an opinion denying protests filed by Patek-Ecklon Company challenging the validity of the definition as construed and interpreted by the Administrator. In the course of his opinion,⁴ the Administrator said:

For a full understanding of the issues raised in these protests it is necessary to review briefly the regulatory actions heretofore taken by the Administrator with regard to hotel supply houses.

In the Statement of Considerations accompanying Revised Maximum Price Regulation No. 169, issued on December 10, 1942, the Administrator stated his intention to establish specific and uniform ceilings for beef fabricated for use by hotels and other purveyors of meals. This intention was carried out in Amendment No. 12 to the Regulation and in similar Amendments to the other meat Regulations. These Amendments provide for a price premium for hotel supply houses, based on historical price relationships prevailing in the industry prior to

⁴ The opinion was issued on June 20, 1944. It is published in Vol. II, OPA Opinions & Decisions, at p. 261.

price control. It was found that sellers who were predominantly engaged in the hotel and restaurant trade were the principal suppliers of that trade, offered more specialized services and therefore usually obtained higher prices than packers or wholesalers; that the costs of such independent establishments were higher than those of packers and wholesalers who could spread their overhead over more diversified operations and whose methods of processing and fabrication were not adapted to the peculiar needs of hotels and restaurants.

The basis for these findings is set forth in detail in the Statement of Considerations involved in Amendment No. 12 to Revised Maximum Price Regulation No. 169. That statement also refers to the definition of "hotel supply house" set forth above and to the quota limitation upon the quantities of fabricated cuts which may be sold to purveyors of meals. The Administrator, while attempting to preserve the historical price premium enjoyed by the particular class of sellers known as "hotel supply house," was obviously faced with the necessity of preventing sellers from taking undue advantage of that premium and diverting supplies needed in a short market from the customary channels of distribution to the hotel and restaurant trade. Therefore a limitation of the amount of fabricated meat cuts which may be sold to purveyors of meals was established in the form of a quota determined by the amount of such sales made during a specified base period. Two sets of prices were established for the sale of fabricated cuts to purveyors of

meals. The higher prices applied to sellers which had historically specialized in that type of business and which were currently engaged exclusively in it. The lower prices applied to other sellers who engaged in the fabrication of beef cuts, and the sale of those cuts to purveyors of meals, in conjunction with some other type of wholesale meat business, such as slaughtering, or selling to wholesalers or retailers. It became necessary to establish criteria of eligibility for the premium price which would, as precisely and simply as possible, distinguish between those who were and those who were not within the scope of the justification for the higher price. Primarily, the distinction was between those establishments which carried on the fabrication of hotel supply cuts in conjunction with other meat business, and those which carried on only a hotel supply business. The definition making the distinction could not be drawn on the basis of sellers, since many slaughterers maintained entirely separate hotel supply establishments which engaged in no other aspect of the meat business. On the other hand, the definition could not be drawn in terms of separate departments, since a hotel supply department operated in immediate proximity to a slaughtering plant or wholesale warehouse would derive the same operating benefits as if there were no separation by "departments." The definition was drawn with reference to the basic fact which made the distinction necessary; namely, the dedication of facilities to the fabrication of cuts for purveyors of meals without having the use of the facilities in whole or in

part for other kinds of meat business. Accordingly, the "hotel supply house," eligible for the premium, was defined as "a separate selling establishment which is not physically attached to a packing or slaughtering plant, packer's branch house, wholesaler's or other selling establishment," and "which is engaged in the fabrication of meat cuts and in the sale of fabricated meat cuts to purveyors of meals." If sales are made to retailers at the same place at which sales are made to purveyors of meals, the establishments are "physically attached" in that they are physically identical. In other words, if the definition is not satisfied when separate but physically connected departments exist, *a fortiori* it is not satisfied when the two operations are physically merged.

Thus it is obvious that a hotel supply house, in order to remain eligible for the price premium, had to eliminate all sales to buyers other than purveyors of meals and to sell henceforth only to purveyors of meals. Otherwise such hotel supply house would no longer be a "separate selling establishment which is not physically attached to a * * * wholesaler's or other selling establishment," but would become a unit partly engaged in the wholesale trade.

This meaning of the definition was repeated in an official interpretation published by the Administrator on October 10, 1943, reading as follows:

In order to retain its status, a hotel supply house must sell meat products only to purveyors of meals. If a hotel supply house sells a carcass, wholesale cut, fabricated cut, sausage,

variety meats or edible by-products, to a retailer, it loses its status as a hotel supply house.

It was reiterated in the Statement of Considerations which the Administrator issued when he promulgated on January 28, 1944, Amendment 36 to Revised Maximum Price Regulation 169, which provides that under certain circumstances hotel supply houses may obtain permission to sell a limited quantity of meat products directly to consumers.⁵ The Statement reads in part as follows:

(2) Amendment No. 12 of Revised Maximum Price Regulation No. 169 defined a hotel supply house to exclude any selling establishment which, subsequent to the effective date of the amendment, engaged in sales of meats from the same selling establishment to others than purveyors of meals. The statement of considerations which accompanied the issuance of this amendment stated in detail the reasons which justified this narrow classification and need not be repeated here. However, soon after the provisions contained in the amendment became effective, comments were received from various field offices of the Office of Price Administration, indicating that the definition as set forth adversely affected those selling establishments which customarily serviced eating places, but, in addition, made sales to ultimate consumers from the same selling establishment and, in

⁵ This amendment itself may be considered in ascertaining the meaning of the definition just as subsequent legislation may always be considered in ascertaining the meaning of earlier legislation in *pari materia* *Great Northern Ry. Co. v. United States*, 315 U. S. 262, 277; *Tiger v. Western Investment Co.*, 221 U. S. 286, 309.

certain areas, seriously interfered with normal distribution of meat either to purveyors of meals or to consumers. Accordingly, it was strongly recommended that any hotel supply house which could show that such consumer sales of the nature referred to were customarily indulged in, should be permitted to continue sales at retail in addition to their sales to purveyors of meals. Serious consideration was devoted to these recommendations. It was believed, on the one hand, that any disadvantage accruing to such establishment pricewise was counter-balanced by the adequate mark-up permitted hotel supply houses on sales of fabricated meat cuts to purveyors of meals, and accordingly was sufficient justification upon which to predicate the preclusion of such establishment from selling retail cuts to ultimate consumers, at retail margins. The Administrator also was of the opinion that the retail operation was not essential to provide a means to the hotel supply house of disposing of those meat cuts which were not customarily sold to hotels and restaurants, since even these cuts could be utilized by the hotel supply house in the manufacture of sausage and hamburger. Yet, notwithstanding these arguments to the contrary, which were designed to provide a groundwork for the action originally taken, the Administrator is of the opinion that a slight relaxation of the restriction provision is warranted to encourage sales to ultimate consumers and to permit normal operations in areas where such combination businesses were important elements in the distribution of meats. This action would be consistent with the principles and objectives

of Revised Maximum Price Regulation No. 169 as set forth in the statement of considerations accompanying the regulation, on file with the Division of the Federal Register. Accordingly, it is provided that a hotel supply house may make sales to ultimate consumers of retail meat cuts, variety meats and edible byproducts and processed meat products at prices not in excess of those established for class 3 and 4 stores in Maximum Price Regulations Nos. 355, "Retail Ceiling Prices for Beef, Veal, Lamb and Mutton Cuts and Variety Meats and Edible By-Products", 336 "Retail Ceiling Prices for Pork Cuts and Processed Meat Products", and 394, "Retail Ceiling Prices for Kosher Beef, Veal, Lamb and Mutton Cuts". Such sales may be made from the same selling establishment in conjunction with its sales of fabricated meat cuts to purveyors of meals, where an affidavit is filed with the Regional Office for the area, stating that such selling establishment regularly and generally engaged in making sales to ultimate consumers from September 15, 1942, through December 15, 1942, and where such selling establishment receives the necessary authorization in writing from the Regional Office. However, it is furthermore provided that in any case where sales by a hotel supply house to ultimate consumers during a three-month quota period exceed 20 percent of the total volume by weight of fabricated meat cuts, ground beef, and miscellaneous beef items and boneless and miscellaneous veal cuts sold and delivered during the same three month quota period to purveyors of meals, such selling establishment would be required thereafter to use

the lower mark-up (Section 1364.452 (o) (5) and Section 1364.467 (a) (5) as the case may be, on sales of fabricated beef cuts and/or fabricated veal cuts to purveyors of meals.

If the meaning of the definition were doubtful the administrative interpretation placed upon it would be controlling unless clearly erroneous. *Bowles v. Seminole Rock & Sand Co.*, 65 S. Ct. 1215. Here the administrative interpretation is obviously not clearly erroneous, for, as we have shown, both the plain meaning of the definition and the reasons which led to its adoption unite in compelling the construction which the Administrator has placed upon the definition. That construction, moreover, has been accepted by the industry in general. In his opinion denying the protest of *Patek-Ecklon Company* above mentioned the Administrator said:

It is important to emphasize that the industry in general has always been aware of the intention of the Administrator to limit the special hotel supply house mark-up to houses which, from the effective date of Amendment 12, sold exclusively to purveyors of meals. That the industry so understood the regulation is apparent from the fact that the Office of Price Administration, soon after Amendment No. 12 became effective, received comments from the field offices indicating that the definition adversely affected those selling establishments which customarily sold to hotels and restaurants but in addition also made some sales directly to ultimate consumers. After due investigation the Administrator determined that a slight relaxation of the

restriction was warranted in order to permit normal operations in areas where such combination businesses were important elements of meat distribution. Accordingly Amendment No. 36 to Revised Maximum Price Regulation No. 169 and Amendment No. 11 to Revised Maximum Price Regulation 239 were issued on January 28 and March 7, 1944, respectively. They provide that under certain conditions hotel supply houses may obtain permission to sell a limited quantity of meat products directly to consumers; at the same time the permissible quota for fabricated cuts was increased from 70% to 90% of base period sales.

From the foregoing we submit that it follows that the construction which the court below placed upon the definition was plainly right.

II. Section 2 (h) does not require that a different construction be placed upon the regulation

Appellants argue that if the definition is construed as the court below construed it then the regulations would be invalid under Section 2 (h) of the Act which prohibits the Administrator from using the powers granted him to compel changes in the business practices established in any industry except where such action is affirmatively found by the Administrator to be necessary to prevent circumvention or evasion of any regulation. But as this court has time and time again held, the only court which has jurisdiction to consider the validity of a regulation issued under the Act is the Emergency Court of Appeals.

Cf. *Rosensweig v. United States*, 144 F. 2d 30 (C. C. A. 9th, 1944)

We appreciate that Appellants disclaim any intention of challenging the validity of the regulation and claim merely to be invoking the firmly established canon of construction that a statute or regulation should, if possible, be construed to save it from invalidity. It may be conceded that inasmuch as the court below was required to interpret the regulations it had authority to make use of the general principles relating to the construction of documents. This would permit the court to consider as an aid to interpretation the reasonableness or absurdity, and the legality of alternative constructions. But those factors are only a few among many to be given weight; the ultimate criterion is the intention of the writer of the documents—in this case the Administrator. If the court were to proceed to determine what the Administrator meant in disregard of the language he employed and the Administrator's own interpretation, because of its views as to the lawfulness of the regulations under the statute, it would plainly be invading the jurisdiction of the Emergency Court of Appeals.

Thus in *Bowles v. Seminole Rock & Sand Company*, 145 F. 2d 482 the Circuit Court of Appeals for the Fifth Circuit placed a construction on a regulation different from that dictated by the plain language of the regulation and the interpretation placed upon it by the Administrator because it was of the opinion that if the construction thus dictated were adopted the regulation would be invalid. On certiorari (65 S. Ct.

1215), the Supreme Court held that the Circuit Court of Appeals erred in so doing, saying:

The problem in this case is to determine the highest price respondent charged for crushed stone during March 1942 within the meaning of Maximum Price Regulation No. 188. Since this involves an interpretation of an administrative regulation a court must necessarily look to the administrative construction of the regulation if the meaning of the words used is in doubt. The intention of Congress or the principles of the Constitution in some situations may be relevant in the first instance in choosing between various constructions. But the ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation. The legality of the result reached by this process, of course, is quite a different matter. In this case the only problem is to discover the meaning of certain portions of Maximum Price Regulation No. 188. Our only tools, therefore, are the plain words of the regulation and any relevant interpretations of the Administrator.

In short, the canon of construction upon which appellants rely can be used only as aid to ascertaining the intention of the author of the regulation. It cannot be resorted to for the purpose of placing upon a regulation a construction different from that dictated by the plain language of the regulation and the administrative interpretation placed upon it.

III. The Administrator has not specifically or by implication provided for sales by hotel supply houses to buyers other than purveyors of meals

Appellants' argument that the Administrator specifically provided for sales by hotel supply houses to buyers other than purveyors of meals is plainly without foundation. The Administrator made no provision for such sales. Appellants point to Sections 1364.407 (e) and 1364.454 (5) of Revised Maximum Price Regulation 169 as authorizing such sales. Section 1364.407 (e) (Appellant's appendix (g)) provides that "every separate selling establishment making sales to purveyors of meats * * * shall keep * * * a complete and accurate record showing separately the sales in pounds * * * to purveyors of means * * * and the sales in pounds made to other buyers." Since not only hotel supply houses but also packers and other sellers who are not prohibited from making sales to buyers other than purveyors of meals sell to purveyors of meals, it is obvious that the section cannot on any construction be said to contemplate sales by hotel supply houses to buyers other than purveyors of meals. Section 1364.454 (5) provides:

For local delivery made from the place of business of a wholesaler or *hotel supply house* * * * to the place of business of a *seller at retail*, purveyor of meals or *commercial user* * * * located more than 25 miles from such shipping point; the seller may add the cost of local delivery * * *.

Since the section applies not only to hotel supply houses but to wholesalers and other sellers as well, it

plainly does not expressly or by implication authorize sales by hotel supply houses to buyers who are not purveyors of meals.

Appellants also contend Section 1364.172 (b) of Maximum Price Regulation 239 (Appellants' Appendix I) indicates that sales by hotel supply houses to buyers who are not purveyors of meals were contemplated. The section enumerates several evasive practices which are prohibited by the regulation, including the selling or invoicing of lamb or mutton by hotel supply houses to persons other than purveyors of meals at prices allowed on sales to purveyors of meals. But the section expressly states that the enumeration is not exclusive. It does not, therefore, provide either expressly or impliedly that hotel supply houses may make sales to buyers who are not purveyors of meals.

IV. The other reasons urged by appellants for a reversal are without merit

The other reasons urged by Appellants for rejecting the trial court's construction of the regulations require but scant comment.

The various statements of the Administrator which Appellants assert indicate that the true construction of the regulations is different from that adopted by the court below support Appellants' contention only if they are torn from their context and then only obliquely. If they are read in their proper context and due regard is had for the time when, and the circumstances in which, they were made, it is plain that not one of them even remotely supports Appellant's contention.

As for Appellants' argument that it is impossible for a hotel supply house to restrict its sales to purveyors of meals (Appellants' Brief, p. 17) because bones, fats, and waste must be sold to tallow renderers and others it is sufficient to point out that Appellants lost their status as a hotel supply house not because of their sales of such products but because of the fact that they permitted their establishment to become a wholesale establishment by making sales to retailers of meat and other commodities the prices of which are regulated by the particular regulations. They would not have lost their status as a hotel supply house merely by making sales of bones, fats, etc., to buyers who are not purveyors of meals.

CONCLUSION

It is respectfully submitted that the judgment should be affirmed.

Respectfully submitted.

GEORGE MONCHARSH,
Deputy Administrator for Enforcement.

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APPENDIX

APPLICABLE PROVISIONS OF THE EMERGENCY PRICE CONTROL ACT OF 1942 AS AMENDED BY SECTION 108 (b) OF THE STABILIZATION EXTENSION ACT OF 1944

(e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than \$25 nor more than \$50, as the court in its discretion may determine: Provided, however, That such amount shall be the amount of the overcharge or overcharges or \$25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilful nor the result of failure to take practicable precautions against the occurrence of the violation. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or

selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.

APPLICABLE PROVISIONS OF REVISED MAXIMUM PRICE
REGULATION 169 AS AMENDED BY AMENDMENT 12

Section 1364.452.

(o) *Applicable zone prices for fabricated beef cuts sold to purveyors of meals.* (1) Subject to the pricing instructions contained in paragraph (a) of § 1364.451, the maximum price for each grade of each fabricated beef cut shall be the applicable zone price

determined in accordance with the provisions of paragraph (a) of § 1364.451, substituting for the purposes of this paragraph (o) the term “fabricated beef cut” whenever the words “wholesale cut” or “wholesale cuts” are used in said paragraph (a) of § 1364.451 plus the permitted additions, if any, specified in Schedule III (§ 1364.454), substituting for the purposes of this paragraph (o) the term “fabricated beef cut” whenever the words “wholesale cut” or “wholesale cuts” are used in Schedule III. No person shall sell or deliver any fabricated beef cut and no person shall buy or receive any fabricated beef cut unless such fabricated beef cuts is a fabricated beef cut as defined in § 1364.455 (b) (3) for which applicable prices have been established.

(2) The fabricated beef cut zone areas 1 to 10 are identical to the beef zone areas set forth in Schedule I (§ 1364.452).

(3) The applicable fabricated beef cut prices for zones 1 and 2 and 5 to 10 shall be the prices specified in subparagraphs (4) or (5) hereof (the applicable zone 3 and 4 price) plus the following:

Zone 1.....	\$1. 75
Zone 2.....	1. 00
Zone 5.....	. 50
Zone 6.....	. 75
Zone 7.....	1. 00
Zone 8.....	1. 25
Zone 9.....	1. 50
Zone 10.....	1. 75

(4) The fabricated beef cut prices applicable in Zone 3 and 4 for sales by a hotel supply house to purveyors of meals, subject to the provisions in paragraph (k) of § 1364.452, substituting for the purpose of this

paragraph (o) the term "fabricated beef cut" for the term "wholesale cut" contained therein, are as follows:

[All prices are on a dollars per hundredweight basis: The price for any fraction of a hundredweight shall be reduced accordingly. The prices set forth herein include costs of packaging]

Fabricated beef cuts	Grade			
	Choice or AA	Good or A	Commercial or B	Utility or C
Round, rump and shank off.....	\$33.50	\$31.50	\$27.50	\$23.50
Boneless rump (butt).....	27.50	25.25	23.00	21.00
Hind shank.....	12.50	12.50	12.50	12.50
Boneless round.....	37.00	34.25	30.25	25.50
Inside (top) round.....	41.50	37.75	33.00	27.50
Outside (bottom) round.....	41.50	37.75	33.00	27.50
Knuckle (face).....	30.00	30.00	27.00	24.00
Gooseneck boneless round.....	36.25	33.00	29.50	25.25
Strip loin (bone in).....	58.25	52.50	44.00	35.00
Boneless strip.....	71.00	64.00	53.50	42.50
Trimmed full beef tenderloin.....	65.00	65.00	55.00	55.00
Trimmed sirloin tenderloin (butt tenderloin).....	65.00	65.00	55.00	55.00
Trimmed tip tenderloin (short tenderloin).....	65.00	65.00	55.00	55.00
Boneless sirloin (butt).....	38.50	35.00	29.50	24.00
Top sirloin (butt).....	49.00	46.00	40.00	32.00
Bottom sirloin (butt).....	31.00	27.25	22.00	18.50
Boneless chuck.....	28.25	27.50	25.75	23.00
Boneless chuck (shoulder clod out).....	27.50	26.75	25.25	22.50
Shoulder clod.....	31.00	31.00	28.00	25.00
Boneless briskets (deckle on).....	26.00	26.00	22.75	22.75
Boneless briskets (deckle off).....	32.75	32.75	28.00	28.00
Oven prepared rib.....	35.50	33.25	29.75	25.50
Rib, short ribs, plate, short ribs.....	22.00	22.00	21.50	21.50
Rib, boned, rolled, and tied.....	43.75	41.25	37.25	32.50
Spencer roll.....	(1)	(1)	45.25	38.75
Regular roll (rib eye).....	(1)	(1)	69.50	58.75
Boneless short plate.....	22.00	22.00	21.50	21.50
Cube steak.....	25.00	25.00	25.00	25.00
Flank steak (scored).....	28.75	28.75	28.75	28.75
Club steaks (bone in).....	59.25	55.25	46.00	40.00
Boneless strip steaks.....	73.25	66.00	55.00	43.75
Porterhouse steaks (bone in).....	59.25	55.25	46.00	40.00
T-bone steaks (bone in).....	59.25	55.25	46.00	40.00
Boneless sirloin steaks.....	39.75	36.00	30.25	24.75
Top sirloin steaks.....	50.50	47.25	41.25	33.00

¹ This grade not permitted to be sold and/or delivered.

(5) The fabricated beef cut prices applicable in Zones 3 and 4 for sales by packing or slaughtering plants, packing branch houses, wholesaler's or other selling establishments to purveyors of meals subject to the provisions in paragraph (k) of § 1364.452, sub-

stituting for the purposes of this paragraph (o) the term "fabricated beef cut" for the term "whole-sale cut" contained therein, are as follows:

[All prices are on a dollars per hundredweight basis: The price for any fraction of a hundredweight shall be reduced accordingly. The prices as set forth herein include cost of packaging]

Fabricated beef cuts	Grade			
	Choice or AA	Good or or A	Com-mercial or B	Utility or C
Round, rump and shank off.....	\$31.50	\$29.50	\$25.75	\$21.75
Boneless rump (butt).....	25.75	23.00	20.75	18.50
Hind shank.....	12.50	12.50	12.50	12.50
Boneless round.....	34.25	31.75	28.00	23.50
Inside (top) round.....	38.25	34.75	30.50	25.25
Outside (bottom) round.....	38.25	34.75	30.50	25.25
Knuckle (face).....	28.50	28.50	25.50	23.00
Gooseneck boneless round.....	33.50	31.25	27.25	23.25
Strip loin (bone in).....	54.00	48.75	41.50	32.50
Boneless strip.....	65.75	59.25	50.25	39.50
Trimmed full beef tenderloin.....	60.00	60.00	50.00	50.00
Trimmed sirloin tenderloin (butt tenderloin).....	60.00	60.00	50.00	50.00
Trimmed tip tenderloin (short tenderloin).....	60.00	60.00	50.00	50.00
Boneless sirloin (butt).....	35.75	32.50	27.00	22.50
Top sirloin (butt).....	45.25	42.75	36.25	29.50
Bottom sirloin (butt).....	29.00	25.25	20.50	17.50
Boneless chuck.....	26.50	25.75	24.00	21.50
Boneless chuck (shoulder clod out).....	25.75	24.75	23.50	20.75
Shoulder clod.....	29.00	29.00	26.50	24.00
Boneless briskets (deckle on).....	24.25	24.25	21.00	21.00
Boneless briskets (deckle off).....	30.25	30.25	26.00	26.00
Oven prepared rib.....	33.25	31.00	28.00	24.00
Rib short ribs, plate short ribs.....	19.75	19.75	19.25	19.25
Rib, boned, rolled, and tied.....	40.75	38.25	34.50	30.00
Spencer roll.....	(1)	(1)	41.50	35.50
Regular roll (rib eye).....	(1)	(1)	63.75	53.25
Boneless short plate.....	20.50	20.50	20.00	20.00
Cube steak.....	24.50	24.50	24.50	24.50
Flank steak (scored).....	27.00	27.00	27.00	27.00
Club steaks (bone in).....	55.00	51.25	42.50	37.00
Boneless strip steaks.....	67.75	61.00	51.75	40.50
Porterhouse steaks (bone in).....	55.00	51.25	42.50	37.00
T-bone steaks (bone in).....	55.00	51.25	42.50	37.00
Boneless sirloin steaks.....	36.75	33.50	27.75	23.25
Top sirloin steaks.....	46.50	44.00	37.25	30.25

¹ This grade not permitted to be sold and/or delivered.

Section 1364.455:

(b) When used in this Revised Maximum Price Regulation No. 169 and when applicable to sales of fabricated beef cuts to purveyors of meals the term:

(1) "Hotel supply house" means a separate selling establishment which is not physically attached to a

packing or slaughtering plant, packer's branch house, wholesaler's or other selling establishment; which is engaged in the fabrication of meat cuts and in the sale of fabricated meat cuts, variety meats and edible byproducts to purveyors of meals; and which during the period September 15 through December 15, 1942 sold to purveyors of meals, other than war procurement agencies, 70 percent of the total weight volume of meat, variety meats, or edible byproducts sold by it.

(2) "Purveyor of meals" means:

(i) any restaurant, hotel, cafe, cafeteria or establishment which purchases meats and where meals, food portions or refreshments are served for a consideration.

(ii) The Army, Navy, Marine Corps, Coast Guard, War Shipping Administration, or any agency of the United States.

(iii) Any person operating an ocean going vessel engaged in the transportation of cargo or passengers in foreign, coastwise or intercoastal trade, to the extent that meat is delivered to him as ship's stores for consumption aboard such vessel.

(iv) Any hospital, asylum, orphanage, prison or other similar institution, which is operated by any federal, state, or local government or agency thereof.

Section 1364.467:

(n) *Applicable zone prices for fabricated veal cuts sold to purveyors of meals.* (1) Subject to the pricing instructions contained in paragraph (a) of § 1364.466, the maximum price for each grade of each fabricated veal cut shall be the applicable zone price determined in accordance with the provisions of paragraph (a) of § 1364.466 substituting for the purposes

of this paragraph (n) the term "fabricated veal cut" whenever the words "wholesale cut" or "wholesale cuts" are used in said paragraph (a) of § 1364.466 plus the permitted additions, if any, specified in Schedule VI (§ 1364.469), substituting for the purposes of this paragraph (n) the term "fabricated veal cut" whenever the words "wholesale cut" or "wholesale cuts" are used in Schedule VI. No person shall sell or deliver any fabricated veal cut and no person shall buy or receive any fabricated veal cut unless such fabricated veal cut is a fabricated veal cut as defined in § 1364.470 (b) (3) for which applicable prices have been established.

(2) The fabricated veal cut zone areas 1 to 10 are identical to the beef zone areas set forth in Schedule I (§ 1364.452).

(3) The applicable fabricated veal cut prices for zones 1 to 3 and 5 to 10 shall be the prices specified in paragraphs (4) or (5) hereof (the applicable zone 4 price) plus the following:

Zone 1	\$2.50
Zone 2	1.50
Zone 3	.75
Zone 5	.50
Zone 6	.75
Zone 7	1.00
Zone 8	1.25
Zone 9	1.50
Zone 10	1.75

(4) The fabricated veal cut prices applicable in Zone 4 for sales by a hotel supply house to purveyors of meals subject to the provisions in paragraph (k) of § 1364.467, substituting for the purposes of this paragraph (n) the term "fabricated veal cut" for the

term "wholesale cut" contained therein, are as follows:

[All prices are on dollars per hundredweight basis; the price for any fraction of a hundredweight shall be reduced accordingly; all prices set forth herein include costs of packaging, except where otherwise specifically provided for]

Fabricated veal cuts	Grade			
	Choice or AA	Good or A	Commercial or B	Utility or C
Veal loin, flank off, kidney and suet out.....	\$35.00	\$32.25	\$27.00	\$23.25
Veal loin steaks, T-Bone, Porterhouse, Club.....	36.50	33.50	28.25	24.25
Veal leg, boned, rolled and tied.....	39.75	37.50	33.00	28.50
Veal leg, oven prepared.....	36.50	34.25	30.25	26.25
Veal hotel rack, chine removed, blade bone cut.....	41.00	41.00	39.00	35.25
Veal rack or rib chops.....	39.75	39.75	37.75	34.00
Veal shoulder, boned, rolled and tied.....	32.50	30.75	27.50	25.75
Boneless veal, shank meat.....	26.50	26.50	26.50	26.50
Veal breast, reg. stew, bone in.....	16.25	16.25	16.25	13.50
Veal breast, with pocket.....	16.25	16.25	16.25	13.50
Boneless veal, shoulder, stew.....	32.00	30.25	27.00	25.25

(5) The fabricated veal cut prices applicable in Zone 4 for sales by packing or slaughtering plants, packing branch house, wholesaler's or other type of distributive establishment to purveyors of meals subject to the provisions in paragraph (k) of § 1364.467, substituting for the purposes of this paragraph (n) the term "fabricated veal cut," for the term "wholesale cut" contained therein, are as follows:

[All prices are on dollars per hundredweight basis; the price for any fraction of a hundredweight shall be reduced accordingly; all prices set forth herein include costs of packaging, except where otherwise specifically provided for]

Fabricated veal cuts	Grade			
	Choice or AA	Good or A	Commercial or B	Utility or C
Veal loin, flank off kidney and suet out.....	\$32.25	\$29.50	\$24.75	\$21.25
Veal loin steaks, T-Bone, Porterhouse, Club.....	33.00	30.25	25.25	21.75
Veal leg, boned, rolled & tied.....	37.00	34.75	30.75	26.50
Veal leg, oven prepared.....	34.00	31.75	28.00	24.25
Veal hotel rack, chine removed, blade bone out.....	38.50	38.50	36.75	33.00
Veal rack or rib chops.....	37.00	37.00	35.25	31.75
Veal shoulder, boned, rolled and tied.....	30.25	28.75	25.50	24.00
Boneless veal shank meat.....	24.75	24.75	24.75	24.75
Veal breast, reg. stew, bone in.....	15.25	15.25	15.25	12.50
Veal breast, with pocket.....	15.25	15.25	15.25	12.50
Boneless veal shoulder stew.....	29.75	28.25	25.00	23.50

Section 1364.470:

(b) When used in this Revised Maximum Price Regulation No. 169 and when applicable to sales of fabricated veal cuts to purveyors of meals, the term: (1) "Hotel supply house" means a separate selling establishment which is not physically attached to a packing or slaughtering plant, packer's branch house, wholesaler's or other selling establishment; which is engaged in the fabrication of meat cuts and in the sale of fabricated meat cuts, variety meats and edible byproducts to purveyors of meals; and which during the period of September 15 through December 15, 1942 sold to purveyors of meals, other than war procurement agencies, 70 percent of the total weight

volume of meat, variety meats, or edible byproducts sold by it.

(2) Purveyor of meals means (i) any restaurant, hotel, cafe, cafeteria or establishment which purchases meats and where meals, food portions or refreshments are served for a consideration.

(ii) The Army, Navy, Marine Corps, Coast Guard, War Shipping Administration, or any agency of the United States.

(iii) Any person operating an ocean going vessel engaged in the transportation of cargo or passengers in foreign, coastwise or intercoastal trade, to the extent that meat is delivered to him as ship's stores for consumption aboard such vessel.

(iv) Any hospital, asylum, orphanage, prison or other similar institution, which is operated by any federal, state or local government or agency thereof.

APPLICABLE PROVISIONS OF REVISED MAXIMUM PRICE
REGULATION 239 AS AMENDED BY AMENDMENT

Section 1364.160 (a):

(5) "*Hotel supply house*" means a separate selling establishment which is not physically attached to a packing or slaughtering plant, packer's branch house, wholesaler's or other selling establishment; which is engaged in the fabrication of meat cuts (fabricated meat cuts), variety meats, edible by-products and sausage to purveyors of meals; and which during the period September 15, 1942, through December 15, 1942, sold to purveyors of meals, other than war procurement agencies, not less than 70 percent of the total weight volume of meat, variety meats, edible by-products or sausage sold by it.

(11) "Purveyor of meals" means:

(i) Any restaurant, hotel, cafe, cafeteria or establishment which purchases meats and where meals, food portions or refreshments are served for a consideration:

(ii) The War Shipping Administration of the United States;

(iii) Any person operating an ocean-going vessel engaged in the transportation of cargo or passengers in foreign, coastwise or intercoastal trade, to the extent that meat is delivered to him as ship's stores for consumption aboard such vessel;

(iv) Any hospital, asylum, orphanage, prison or other similar institution, which is operated by any federal, state, or local government agency thereof.

Section 1364.177 (c) (1):

(i) The Zone 2, 3 and 4 prices per hundredweight for hotel supply cuts sold by a hotel supply house to purveyors of meals are as follows:

Item	Lamb				Mutton	
	Grade AA	Grade A	Grade B	Grade C	Grade S	Grade H
Leg—oven prepared.....	\$39.00	\$37.75	\$35.50	\$32.75	\$22.00	\$20.50
Leg—boned; rolled and tied.....	42.50	40.75	38.50	35.50	23.75	22.25
Loin—flank on—kidney and suet out.....	38.75	34.25	27.75	22.75	16.50	14.25
Loin—flank off, kidney and suet out.....	43.50	38.25	30.25	23.75	17.00	14.75
Loin chops.....	46.00	40.00	31.75	25.25	17.75	15.25
Loin—boned, rolled and tied.....	50.50	44.25	35.25	28.25	21.50	18.25
Hotel rack—rib chops—regular.....	40.25	36.75	31.00	25.50	17.75	15.25
Hotel rack—rib chops, 8th to 12th ribs, inclusive.....	41.50	37.75	31.75	26.25	18.25	15.50
Hotel rack—rib chops, 5th to 7th ribs, inclusive.....	35.00	32.25	27.50	22.75	15.50	13.50
Hotel rack—chine removed, blade bone out.....	41.25	38.50	33.00	27.75	18.00	15.75
Yoke—boned, rolled and tied.....	(1)	(1)	(1)	(1)	11.25	9.75
Yoke—boneless stew.....	27.25	20.50	25.50	23.50	11.50	10.00
Shoulder—boned, rolled and tied.....	33.75	33.00	32.00	30.25	13.00	10.75
Shoulder—regular stew, bone in.....	26.50	25.75	24.75	23.00	10.25	9.00
Shoulder—boneless stew.....	34.25	33.00	31.75	29.50	13.00	10.75
Breast and shank—regular stew, bone in.....	12.25	12.25	12.25	11.00	7.00	7.00
Breast—regular stew, bone in.....	12.25	12.25	12.25	11.00	7.00	7.00
Shanks for braising or regular stew—bone in.....	13.25	13.25	13.25	12.00	7.50	7.50

Not permitted to be sold and/or delivered in this grade.

(ii) The Zone 2, 3 and 4 prices per hundredweight for hotel supply cuts sold by a packing or slaughtering plant, packing branch house, wholesaler or other selling establishment to purveyors of meals are as follows:

Item	Lamb				Mutton	
	Grade AA	Grade A	Grade B	Grade C	Grade S	Grade M
Leg—oven prepared.....	\$36. 25	\$35. 00	\$33. 00	\$30. 50	\$20. 50	\$19. 25
Leg—boned, rolled and tied.....	39. 50	37. 75	35. 75	33. 00	22. 00	20. 50
Loin—flank on, kidney and suet out.....	36. 50	32. 25	26. 00	21. 25	15. 25	13. 25
Loin—flank off, kidney and suet out.....	40. 75	35. 50	28. 00	22. 50	15. 75	13. 50
Loin chops.....	42. 00	36. 75	29. 00	23. 00	16. 25	14. 00
Loin—boned, rolled and tied.....	47. 00	41. 00	32. 50	26. 25	19. 75	16. 75
Hotel rack—rib chops—regular.....	27. 25	34. 00	28. 75	23. 50	16. 25	14. 00
Hotel rack—rib chops, 8th to 12th ribs, inclusive.....	38. 00	34. 75	29. 25	24. 00	16. 75	14. 25
Hotel rack—rib chops, 5th to 7th ribs, inclusive.....	33. 25	30. 75	26. 25	21. 75	14. 75	12. 75
Hotel rack—chine removed, blade bone out.....	38. 50	35. 75	30. 75	25. 75	16. 75	14. 75
Yoke—boned, rolled and tied.....	(1)	(1)	(1)	(1)	10. 50	9. 00
Yoke—boneless stew.....	25. 25	24. 50	23. 75	21. 75	10. 50	9. 00
Shoulder—boned, rolled and tied.....	31. 50	30. 50	29. 75	28. 00	12. 00	9. 75
Shoulder—regular stew, bone in.....	24. 75	24. 00	23. 00	21. 50	10. 00	8. 50
Shoulder—boneless stew.....	32. 00	30. 75	29. 50	27. 50	12. 00	9. 75
Breast and shank—regular stew, bone in.....	11. 50	11. 50	11. 50	10. 25	6. 50	6. 50
Breast—regular stew, bone in.....	11. 50	11. 50	11. 50	10. 25	6. 50	6. 50
Shanks for braising or regular stew, bone in.....	12. 50	12. 50	12. 50	11. 25	7. 00	7. 00

¹ Not permitted to be sold and/or delivered in this grade.